



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33387561

Date: OCT. 15, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for the classification by establishing the Petitioner's receipt of a major, internationally recognized award, or by meeting at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a

major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). 6 *USCIS Policy Manual* F.2, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>.

II. ANALYSIS

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director determined that the Petitioner met two of the regulatory criteria by providing sufficient evidence that he judged the work of others in the field and authorship of scholarly articles in the field in a professional or trade publication or major media. *See* 8 C.F.R. § 204.5(h)(3)(iv) and (vi). On appeal, the Petitioner asserts that he also meets two other criteria, including the leading or critical role with a distinguished organization criterion at 8 C.F.R. § 204.5(h)(3)(viii). He asserts that the Director erred in determining that he did not meet the plain language of these two criteria.

As more fully discussed below, we conclude that the Petitioner has met the criterion at 8 C.F.R. § 204.5(h)(3)(viii). Because the Petitioner has shown that he satisfies at least three criteria, we will remand the matter to the Director to evaluate the totality of the evidence in the context of a final merits determination to determine whether the Petitioner has demonstrated his sustained national or international acclaim, his status as one of the small percentage at the very top of his field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

In general, a leading role may be evidenced from the role itself, and a critical role is one in which an individual is responsible for the success or standing of the organization or establishment. To meet this criterion, the person must establish that they have performed in a leading or critical role for an organization, establishment, or a division or department of an organization or establishment.

For a leading role, we look at whether the evidence establishes that the person is (or was) a leader within the organization or establishment or a division or department thereof. A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading. For a critical role, we determine whether the evidence establishes that the person has contributed in significantly important ways to the outcome of the organization or establishment's activities or those of a division or

department of the organization or establishment. *See generally* 6 USCIS Policy Manual F.2, <https://www.uscis.gov/policy-manual>.

The Petitioner contended before the Director that he performed in leading or critical roles for the [REDACTED]. The Director determined that the Petitioner did not meet this criterion concluding that the record lacked sufficient evidence that he held a leading role or that he had contributed in a significantly important way to the organization's activities or a division or department within the organization. Based on our de novo review of the record, we withdraw the Director's determination that the Petitioner did not provide evidence sufficient to meet the plain language requirements of this criterion.

On appeal, the Petitioner asserts that the Director did not sufficiently consider the significance of his responsibilities and contributions to the [REDACTED] while employed in the transplant research department. For instance, he points to the two employment verification letters submitted with the petition that describe in detail the Petitioner's critical role conducting necessary work for all clinical trials running in the clinical department. The letters also indicated that due to the Petitioner's published work that "grabbed the attention" of a company, the department finalized a partnership with that company in order to start the first clinical trial in the United States to evaluate the role of [REDACTED] in inhibiting the fibrosis of transplant organs. The testimonial letters highlight the Petitioner's critical role in the transplant research department at [REDACTED] a top ranked hospital in the United States with a distinguished reputation.

For the foregoing reasons, we agree with the Petitioner that, more likely than not, he meets the plain language requirements for this criterion through performing critical roles for an entity that possesses a distinguished reputation, and the Director erred in concluding otherwise. We withdraw this aspect of the Director's decision and remand the matter for further review and entry of a new decision. Because the Petitioner has established his qualifications under criteria at 8 C.F.R. § 204.5(h)(3)(iv), (vi), and (viii), on remand, the Director should conduct a final merits review of the evidence of record.

As extraordinary ability is an elite level of accomplishment whose recognition necessarily entails a judgement call, it cannot be established through meeting at least three of the evidentiary criteria alone. The final merits determination is the ultimate statutory inquiry of whether the applicant has extraordinary ability as demonstrated by sustained national or international acclaim. *Amin v. Mayorkas*, 24 F.4th 383, at 395 (2022). The Petitioner seeks a highly restrictive visa classification, intended for the handful of individuals at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). As contemplated by Congress, the Petitioner must demonstrate the required sustained national or international acclaim, consistent with a "career of acclaimed work in the field." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act.

The new decision should include an analysis of the totality of the evidence, evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, his status as one of the small percentage at the very top of her field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *See* section

203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. We express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.